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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/501,178

07/09/2004

Werner Fritz Dubach

F-336

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12/01/2006

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EXAMINER

MCKINLEY, CHRISTOPHER BRIAN

ART UNIT

PAPER NUMBER

3781

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/501,178

Applicant(s)

DUBACH, WERNER FRITZ

Examiner

Christopher B. McKinley

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 July 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☒ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 July 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☒ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>4/8/2005</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. The use of double brackets in claim 1 and all subsequent appearances of the same render the amendment unclear. Does the applicant intend to delete or add the information contained within the aforementioned brackets?

4. Claim 13 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Claim 13 recites the limitation "the intermediate elements" in line 2. There is insufficient antecedent basis for this limitation in the claim. What are "the intermediate elements?"

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 6-8, 13 and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Leach (2,961,119). Leach discloses the limitations of the claims including a plastic closure (fig. 1) comprising a lower part (15), a cap (16), a snap hinge (17), all of which are manufactured in a closed state (col. 2, line 57) and connected one to another by at least one separation seam (33), the lateral walls of the cap and lower part are arranged on top of one another in a flush manner (fig. 1), said seams connect a guarantee strip to the lower part and the cap (fig. 3, 32), said separation seams run in two planes perpendicular to the central middle axis of the closure (fig. 1) and wherein intermediate elements are separated from the lateral sidewall by a gap (figs. 2 and 3) also connected to the walls by separation seams.

8. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Stull (5,437,383). Stull discloses the limitations of the claims including a plastic closure (fig. 1) comprising a lower part (14), a cap (12), a snap hinge (36), all of which are manufactured in a closed state (col. 2, lines 36-42) and connected one to another by at least one separation seam and the lateral walls of the cap and lower part are arranged on top of one another in a flush manner (fig. 1).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leach ('119) in view of Mueller et al. (2003/0116879). Leach discloses the limitations of the claims, as described in par. 5, excluding inward and/or outward formations on the inner surfaces of the closure. However, Mueller et al. teaches inner surfaces of the lateral wall's lower part having inward and/or outward formations (fig. 3, 38) for the purpose of engaging the grooves or beads on the container neck (paragraph 86). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Leach with inward and/or outward formations (fig. 3, 38) on an inner surface of the closure for the purpose of engaging grooves or beads on the container neck.

11. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leach ('119) in view of Harrold et al. (6,631,820). Leach discloses the limitations of the claims, as described in par. 5, excluding inward and/or outward formations on the outer surfaces of the closure. However, Harrold et al. teaches inward and/or outward formations on the outer surfaces of the closure (fig. 1, 42) for the purpose of providing vertical support and stability to the closure. Therefore it would have been obvious to one having ordinary skill in the art of invention to have modified Leach with inward and/or outward formations on the outer surfaces of the closure in order to provide vertical support and stability to the closure.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Leach ('119) in view of Neveras et al. (5,386,918). Leach discloses the limitations of the claims, as described in par. 5, excluding two separation seams inclined to the central middle axis of the closure. However, Neveras et al. teaches a cap capable of having two separation seams inclined to the central middle axis of the closure (figs. 1 and 2) for the purpose of having varying design shape. Therefore, it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Leach with a cap capable of having two separation seams inclined to the central middle axis of the closure in order to have varying design shape.

13. Claim 10 is rejected under 35 U.S.C. 103(a) as being obvious over the Leach ('119) as described in par. 5 and applied to claim 6 above. Leach discloses the limitations of the claims, as described in par. 5, excluding two separation seams oriented such that they have different inclines with respect to the central middle axis of the closure. However, Leach does teach a mechanical equivalent to the aforementioned technical feature including two separation seams perpendicular to the central middle axis of the closure. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Leach with two separation seams oriented such that they have different inclines with respect to the central middle axis of the closure in order to have varying design options. Moreover a change in form or shape is generally recognized as being within the level of ordinary

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skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ

47. A Change in aesthetic (ornamental) design generally will not support patentability.

*In re Seid*, 73 USPQ 431.

14. Claims 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Leach ('119) in view of Stull (5,437,383). Leach discloses the limitations of the claims, as described in par. 5, excluding a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another, contacting each other at a middle portion following a curved course and sharp bend and the film hinges enclosing two lateral intermediate elements. However, Stull teaches a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another (fig. 1, 42), contacting each other at a middle portion following a curved course and sharp bend (36) and the film hinges enclosing two lateral intermediate elements (fig. 3, 44) for the purpose of imparting a toggle function to the cap between opening and closing positions (col. 4, line 32). Therefore it would have been obvious to one having ordinary skill in the art at the time of invention to have modified Leach with a snap hinge formed of two film hinges that follow a course that centrally approach one another and diverge from one another, contacting each other at a middle portion following a curved course and sharp bend and the film hinges enclosing two lateral intermediate elements in order to impart a toggle function to the cap between opening and closing positions.

***Allowable Subject Matter***

15. Claims 15-26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher B. McKinley whose telephone number is (571) 272-3370. The examiner can normally be reached on 7:00 AM - 3:30 AM.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

18. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ANTHONY D. STASHICK  
PRIMARY EXAMINER